STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF MANAGED HEALTH CARE

> File No. 933 0335 Material Modification No. 20101795 Order No. 20101795

Licensee: Kern Health Systems

ORDER DISAPPROVING NOTICE OF MATERIAL MODIFICATION

Pursuant to Health and Safety Code section 1352(b), the Notice of Material Modification ("Notice") filed by Kern Health Systems (the "Plan") on September 22, 2010, requesting approval of alternative time-elapsed standards under California Health and Safety Code section 1367.03 and section 1300.67.2.2 of Title 28, California Code of Regulations ("Timely Access Regulation", "the Regulation", or "the Rule"), is disapproved as of the date set forth below.

Per California Code of Regulations, Title 28, Section 1300.67.2.2(g)(1), the Plan shall file with the Department an amendment describing its policies, procedures, and systems for compliance with the Timely Access Regulation and demonstrating that its provider network has the capacity to offer its enrollees appointments that meet time elapsed standards under Section 1300.67.2.2 within 30 days of the date of this Order.

The Plan requested alternative time-elapsed standards under section 1300.67.2.2(f) of Title 28, California Code of Regulations, as follows:

Type of Appointment

Non-urgent primary care

With a specialist other than one of the below specified specialties

Plan's Request for Alternative Time-Elapsed Standards

Within 20 business days of a request, except as provided in subdivision (G)¹ Within 30 business days of a request, except as provided in subdivision (G)

¹ Except as provided in Section 1300.67.2.2(c)(5)(G) of Title 28.

Dermatology Within 2 months of a request, except as provided

in subdivision (G)

Endocrinology Within 2 months of a request, except as provided

in subdivision (G)

Genetics Within 2 months of a request, except as provided

in subdivision (G)

Neurosurgery Within 2 months of a request, except as provided

in subdivision (G)

Orthopedic Surgery Within 2 months of a request, except as provided

in subdivision (G)

Colorectal Surgery Within 2 months of a request, except as provided

in subdivision (G)

Plastic Surgery Within 2 months of a request, except as provided

in subdivision (G)

Kidney Transplant Within 2 months of a request, except as provided

in subdivision (G)

There are three aspects to Section 1300.67.2.2(f) that must be considered to determine propriety of the Plan's request. First, the Plan's request shall include an explanation of the Plan's clinical and operational reasons for requesting the alternative standard. Second, the burden shall be on the Plan to demonstrate and substantiate why a proposed alternative standard is more appropriate than time elapsed standards. Third, the Department may consider all relevant factors, including but not limited to the factors set forth in subsections (d) and (e) of Section 1367.03 of the Act and subsection (c) of Section 1300.67.2.1 of Title 28.

The Department has reviewed the information submitted to support the Plan's request. The Plan identified the following reasons for its request for alternative time elapsed standards:

- Medi-Cal pays providers an average of only 86% of the cost of providing health care to Medi-Cal patients
 - Current Medi-Cal provider rates are close to 1985 levels
- DHCS sets rates knowing that Medi-Cal providers subsidize Medi-Cal loses with higher payments from non-Medi-Cal patients but Kern HS does not have any commercial lines of business.
- The Plan seeks to avoid delegating financial risk to its contracting providers under capitation schemes or other financial arrangements

The Department is unable to conclude that 1) the Plan provided an explanation of the Plan's clinical and operational reasons for requesting the standard demonstrating that its proposal is consistent with professionally recognized standards of practice and 2) the Plan demonstrated and substantiated why a proposed alternative standard is more appropriate than time elapsed standards, as required by Section 1300.67.2.2(f). As such, the Plan's request for alternative time-elapsed standards is denied.

Pursuant to Cal. Health and Saf. Code § 1354, the Plan has a right to a hearing upon the issuance of an Order disapproving a notice of material modification if the Plan makes a written request within thirty (30) days after the date of mailing of the enclosed Order.

This Order shall be in force and effect commencing on the date below and shall remain in effect until revoked or superseded by further Order of the Director.

Dated:

April 26, 2011

Sacramento, California



EDWARD G. HEIDIG Interim Director Department of Managed Health Care

AMY W KRAIISE

Assistant Chief Counsel, Licensing Division